91-1353

CASE NO. _____

UNITED STATES SUPREME COURT

OCTOBER TERM, 1991

THOMAS F. CONROY, PETITIONER

v.

WALTER S. ANISKOFF, JR.,

THE INHABITANTS OF THE TOWN

OF DANFORTH, MAINE, AND

H.C. HAYNES, INC., RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO

THE SUPREME JUDICIAL COURT OF MAINE

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Whether §525 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, 50 U.S.C. Appendix §525, protects a member of the United States Armed Forces, during military service, from seizure and sale of his real property by a municipal taxing authority for unpaid taxes on that real property levied during the period of military service without a showing of prejudice resulting from that military service.

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STATUTES AND AUTHORITIES

STATUTES

REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS IN THE INSTANT CASE

The opinion of the Superior Court of the State of Maine was rendered on November 6, 1990, and is contained in the Appendix. The opinion of the Supreme Judicial Court of Maine was rendered on November 27, 1991, and is contained in the Appendix. It may be found at 599 A.2d 426 (Me. 1991).

JURISDICTION

On November 27, 1991, the Supreme Judicial Court of Maine, entered a judgment affirming the decision of the Maine Superior Court entered on February 19, 1991.

This Court has jurisdiction to grant a Writ of Certiorari because the Supreme Judicial Court of Maine, the court of last resort in the State of Maine, has decided a federal question in a way that conflicts with the decisions of other state courts of last resort and with the decisions of several United States Courts of Appeals. Further, this Honorable Court has jurisdiction because the Supreme Judicial Court of Maine, has decided an important question of federal law in a

way which conflicts with the applicable decision of this Court.

28 U.S.C. §1257 confers jurisdiction on this Court to review the judgment in question by Writ of Certiorari.

THE STATUTE INVOLVED

§525. Statutes of limitations as affected by period of service

The period of military service shall not be included in computing any period now or hereafter to be limited by any law, regulation, or order for the bringing of any action or proceeding in any court, board, bureau, commission, department, or other agency of government by or against any person in military service or by or against his heirs, executors, administrators, or assigns, whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs

after the date of enactment of the Soldiers' and Sailors' Civil Relief Act Amendments of 1942 be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.

STATEMENT OF THE CASE

The Petitioner was on active duty with the United States Army from November 26, 1966, through the date of trial, without interruption. He owned two lots in the Town of Danforth, Maine, on which minimal taxes were assessed. Despite the Petitioner's keeping the Town of Danforth advised of his changing addresses, he received no tax bills for the years 1984, 1985, and 1986. The Town of Danforth had continued to send them to an earlier address and they did not reach him at his many duty stations throughout the world. The Town of Danforth then seized his land for taxes and sold it pursuant to the law of the State of Maine. Under Maine law, a lien is placed on the

property and the owner has 18 months in which to redeem before title ripens in the municipality. 36 M.R.S.A. §943. The Maine statute provides a procedure, employed by the Town of Danforth, by which the municipality's tax title may be perfected and the owner's right to redeem the property may be foreclosed without actual notice to the property owner, provided notice is mailed to the property owner's "last known address." Such notice was mailed, in this instance, to Petitioner's former address as reported to the Town of Danforth in 1983. Upon foreclosure, title vests absolutely in the municipality, and the municipality is not required to account for any proceeds from its sale or use of the property. Donaghy v. Leighton, 351 A.2d

125 (Me. 1976). At trial the parties stipulated that all of the Maine statutory proceedings allowing the Town to acquire property for non-payment of taxes were properly followed and that, were it not for §525 of The Soldiers' and Sailor's Civil Relief Act of 1940, as amended, the Town would have perfected title in this case.

The Town of Danforth acted despite the provisions of The Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. App. §501 et. seq. Respondents, Walter Aniskoff, Jr. and H. C. Haynes, Inc., purchased the non-existent interest of the Town of Danforth and each received a quitclaim deed therefor. Despite subsequent notice of the Petitioner's ownership and lack of consent, H.C. Haynes, Inc.

clear-cut timber on the land and carried it away.

The Petitioner's action sought restoration of his title in the land and statutory damages and costs for trespass. The Petitioner raised the applicability of §525 of The Soldiers' and Sailors' Civil Relief Act in his complaint. The Maine Superior Court held that §525 of The Soldiers' and Sailors' Civil Relief Act did not apply to protect the Petitioner from the seizure and sale of his land unless he could demonstrate that his military service caused him some hardship which rendered him unable to pay his taxes. On appeal to the Supreme Judicial Court of Maine, the only issue raised by the Petitioner, was the protection afforded him by §525 of The Soldiers' and Sailors' Civil Relief Act. The Supreme

Judicial Court of Maine, on November 27, 1991, affirmed the decision of the Maine Superior Court.

ARGUMENT

In Le Maistre v. Leffers, et. al., 333 U.S. 1 (1948), this Court held that the provisions of §525 of The Soldiers' and Sailors' Civil Relief Act of 1940, as amended, protected a serviceman who owned land in Florida on which taxes became delinquent from seizure and sale of the property by local taxing authorities for delinquent taxes while he was on active duty in the United States Navy. This Court stated that the provisions of §525 were clear and unequivocal and protected a serviceman from seizure of his real estate for taxes and the subsequent sale to pay those taxes. Despite this decision, the Supreme Judicial Court of Maine held to the contrary and ruled

that §525 did not offer your Petitioner that protection.

The United States Courts of Appeals for the First, Third, Fourth, Sixth, and Tenth Circuits, as well as the United States Claims Court, have held that §525 is absolute and no showing of prejudice is required. The mere status of being on active duty in the United States Armed Forces is all that is required. Mouradian v. The John Hancock Companies, 930 F.2d 972 (1st Cir. 1991)(dictum); Mason v. Texaco, Inc., 862 F.2d 242 (10th Cir. 1988); Ricard v. Birch, 529 F.2d 214 (4th Cir. 1975); Ray v. Porter, 464 F.2d 452 (6th Cir. 1972); Wolf v. C.I.R., 264 F.2d 82 (3rd Cir. 1959); Bickford v. U.S., 656 F.2d 636 (Ct. Cl. 1981). The United States Court of Appeals for the Fifth

Circuit has held to the contrary and required of the serviceman a showing that his military service prejudiced him in his ability to attend to his private business. Pannell v. Continental Can Company, Inc., 554 F.2d 216 (5th Cir. 1977). Furthermore, in a recent unpublished opinion, the United States Court of Appeals for the Fourth Circuit apparently overruled Ricard v. Birch without referring to it. Townsend v. Secretary of Air Force, 947 F.2d 942 (4th Cir. 1991)(text on Westlaw).

In addition, two state court decisions have had held that a showing of prejudice by the service member was necessary. Bailey v. Barranca, 488 P.2d 725 (N.Mex. 1971) and King v. Zagorski, 207 So.2d 61 (Fla. 1968). Other state courts have held precisely the

contrary, that is, that no showing of prejudice is necessary. See e.g. Peace v. Bullock, 40 So.2d 82 (Ala. 1949); King v. First Nat Bank of Fairbanks, 647 P.2d 596 (Ak. 1982); Syzemore v. County of Sacramento, 127 Cal. Rptr. 741 (1976); Illinois Nat. Bank of Springfield v. Gwinn, 61 N.E.2d 249 (Ill. 1945); McCance v. Lindau, 492 A.2d 1352 (Md. 1985); Day v. Jones, 187 P.2d 181 (Ut. 1947).

If other sections of The Soldiers' and Sailors' Civil Relief Act make "hardship" a relevant factor, then it is significant that §525 does not. For example, attention is respectfully invited to §§520, 521, 522, 523, 526, and 531. Since Congress made hardship a factor in all of those sections, Congress could have made hardship a

factor in §525. That it chose not to do so is of extreme importance.

The opinion in McCance v. Lindau, 492 A.2d 1352 (Md. 1985), contains a detailed analysis of the history of §525 and comes to the conclusion that if the United States Congress had intended to require the servicemen to demonstrate hardship under §525, it would have been a simple matter for Congress to have added that provision. As the Court in McCance pointed out, more than sixty years have elapsed since §525 was first enacted. If there had been any discontent with the application of that section, Congress could have either repealed or amended it. Congress has declined to do so, however, despite its revisions of The Soldiers' and Sailors' Civil Relief

Act numerous times since its enactment.

On March 18, 1991, President Bush signed the Soldiers' and Sailors' Civil Relief Act Amendment of 1991. Pub. L. No. 102-12, 102d Congress, 1st Sess. 105 Stat.32. As a result of the Persian Gulf War, Congress once again considered §525. Once again it left it untouched except for substituting "October 6, 1942" for "the date of enactment of The Soldiers' and Sailors' Civil Relief Act Amendments of 1942." Since Congress changed §525 slightly, the omission of a further amendment requiring a demonstration of hardship clearly was not through oversight. Indeed, Congress enacted two new provisions to protect service personnel which require no showing of hardship. In addition to the existing protection

of §521 concerning stays of actions, Congress provided that all civil actions then pending involving members of the armed forces were stayed until June 30, 1991, without any requirement to demonstrate hardship. P.L. 102-12, §6(a). Congress further enacted a new section which provides that those personnel providing professional services will be eligible to have their professional liability policies suspended during active service without regard to hardship. Under this provision liability insurance carriers may not charge premiums for professional liability coverage during active service by the insured. Carriers must either refund any premiums paid for future coverage or credit the premiums toward premiums to be paid

after active service ends. 50 U.S.C. App. §592. Again Congress required no demonstration of hardship just as it has required no showing of hardship to invoke the benefits of §525.

Congress is certainly aware that some provisions of The Soldiers' and Sailors' Civil Relief Act require a showing of hardship and some do not; nonetheless, Congress has left §525 intact and essentially unchanged. Section 525 is triggered by the status of the service member. Section 525 has never contained a requirement of hardship and does not now contain such a requirement. If Congress had wished to overturn the majority rule and require a demonstration of hardship to invoke the protection of §525, it would have done so. That it has chosen not to

do so must not be lightly disregarded.

In view of the foregoing, Petitioner respectfully submits that it is entirely appropriate for this Honorable Court to grant his petition for a Writ of Certiorari to the Supreme Judicial Court of the State of Maine in order that this Court may resolve the conflicts which exist between the United States Circuit Courts of Appeals on this issue and between the decision of the Maine Supreme Judicial Court and this Honorable Court's decision in Le Maistre v. Leffers and in order to afford Petitioner the protection granted by the statutes of the United States embodied in The Soldiers' and Sailors' Civil Relief Act. The Petitioner therefore respectfully requests that this Honorable Court

grant his Petition for a Writ of Certiorari.

Respectfully submitted,

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STATE OF MAINE
WASHINGTON, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-88-04

Thomas F. Conroy, Plaintiff vs. Walter Aniskoff, Jr. and The Inhabitants of the Town of Danforth Defendants	)	DECISION AND ORDER

Docket No. CV-88-04

Thomas F. Conroy, Plaintiff vs. H.C. Haynes, Inc., Defendant	)	DECISION AND ORDER

This matter comes before this Court as two separate causes consolidated together, pursuant to M.R. Civ. P. 42(a), for the purposes of the present jury waved trial. Trial was held before this Court on September 26, 1990, at which time all four parties

appeared through their respective counsel. All parties submitted to this Court appropriate memoranda of law in support of their respective positions. After consideration of the entire record, as well as all the evidence submitted, including pertinent stipulations, this Court finds as follows.

FACTS

The parties to this matter do not significantly dispute the pertinent facts.

Plaintiff, Thomas Conroy, is a Colonel in the United States Army. He has been on continuous active duty with the Army since November 26, 1966. To date, plaintiff is still on active duty. Since entering the Army, plaintiff has been stationed at the following locations:

Fort Campbell 11/67-9/67

Republic of Vietnam ... 11/67-11/68

Eglin AFB, FL 12/68-10/70

Fort Benning, GA 10/70-7/71

Fort Devens, MA 8/71-7/73

Boston Army Base, MA .. 7/73-6/75

Fort Leavenworth, KS .. 7/75-7/76

Republic of Korea 8/76-8/77

Fort Devens MA 9/77-5/80

Westover AFB MA 6/80-7/82

Fort Devens MA 8/82-1/86

Rome, Italy 1/86-8/86

Brunssum, Netherlands . 8/86-present

On or about May 1, 1973, while stationed at Fort Devens, MA., plaintiff purchased the real estate at issue here and located in Danforth, Maine. Plaintiff paid all real estate taxes due on the property from the date of purchase until 1984. Significantly, plaintiff paid said taxes while

stationed in Korea. Though stationed at Fort Devens, Ma., during two of the years in question, plaintiff claims that he did not receive the tax bills assessed and due on his Danforth property for the years of 1984 and 1985. Concerned, plaintiff claims that in late 1985 he forwarded written correspondence to Danforth regarding these two bills but never received a reply. Upon his move overseas, plaintiff took no further action in 1986.

Due to expired tax liens assessed against plaintiff's property for the years of 1984, 1985, and 1986, Danforth sold said property to Defendants Aniskoff and Haynes, Inc. The record amply demonstrates that Danforth did send notices to plaintiff at his Fort Devens address regarding the tax bills

for these three years; all were returned as "undeliverable as addressed and unable to forward." The Town never received notice that plaintiff had changed his address. The Town also sent plaintiff notices of tax liens and impending automatic foreclosure which were also returned as undelivered. The Town, on or about December 22, 1986, sold plaintiff's property to said defendants.

The following stipulation entered into on September 29, 1990, by all parties is also significant:

> It is hereby stipulated that all the statutory proceedings allowing the Town to acquire property for non-payment of taxes were properly followed in this

particular instance, including notice and recording requirements; and that were it not for the Soldiers and Sailors Civil Relief Act, the Town title would have been perfected in this particular instance.

DISCUSSION

Plaintiff's sole claim in this action is that the acquisition of this property by the Town and subsequent sale of said property to defendants herein is void pursuant to 50 U.S.C. App. § 525. He claims that because § 525 tolls the redemption period provided by state law, the Town could not acquire valid title to his property. This Court notes that the

issue regarding the interpretation and application of 50 U.S.C. App. § 525 to the facts underlying this matter is both novel and one of first impression within this federal circuit and this state.

Title 50 U.S.C. App. § 525, § 205 of the Soldiers and Sailors Civil Relief Act (SSCRA), reads in pertinent part:

Statutes of Limitations as affected by period of service.

The period of military service shall not be included in computing any period now or hereafter to be limited by law...for the bringing of any proceeding in any court, board, bureau. commission,

department or other agency of government...against any person in military service...whether such cause of action or the right or privilege to institute such action or proceeding shall have accrued prior to or during the period of such service, nor shall any part of such period which occurs after the date of enactment of [this Act] be included in computing any period now or hereafter provided by any law for the redemption of real property sold or forfeited to enforce any obligation, tax, or assessment.

This Court notes that judicial interpretation of this statute has developed a split of authority. Some courts have interpreted the relevant language as creating an absolute bar to the running of any limitations period; military service of any kind tolls any, limitations period, the pendency of which period then runs again from the date that military service is terminated. See, e.g., Le Maistre v. Leffers, 333 U.S. 1 (1948); Mason v. Texaco, Inc., 862 F.2d 242 (10th Cir. 1988); Ray v. Porter, 464 F.2d 452 (6th Cir. 1972); Bickford v. United States, 656 F.2d 636 (Ct.Cl. 1981); McCance v. Lindau, 492 A.2d 1352 (Md.App. 1985); Syzemore v. County of Sacramento, 127 Cal.Rptr. 741 (Cal.App.3d 1976). The interpretation of § 525 adopted in this line of cases is founded on the general

principle of statutory interpretation providing that where the language of a statute is clear, it is to be applied according to its plain meaning; courts should not re-write statutes no matter how absurd the result. See, e.g., McCance, 492 A.2d at 1356-57.

Other courts decline to adopt this rigid interpretation and instead hold that, with respect to career military servicemen, no limitations period is tolled merely because of military service status; limitations periods may be tolled upon a showing that said military service resulted in hardship excusing timely legal action. See, e.g., Pannell v. Continental Can Co., Inc., 554 F.2d 216 (5th Cir 1977); Bailey v. Barranca, 488 P.2d 725 (N.M. 1971); King v. Zagorski, 207 So.2d 61 (Fla. Dist. Ct. App. 1968). The

interpretation of § 525 adopted in this line of cases is alternatively based on the fact that the SSCRA was only intended to provide relief for one subject to military service by conscription who is called away from civilian life to distant lands and faced with threats of war. See, e.g., King v. Zagorski, 207 So.2d at 64-65. These courts find the tolling of limitations periods applicable to career military servicemen not handicapped by their military status to be absurd and illogical. See, e.g., id. at 67; Bailey, 488 P.2d at 728.

This Court discerns another critical difference between the two juxtaposed line of cases. The former can all be distinguished factually from the latter cases. In the former line of cases, with the exception of Le

Maistre, § 525 is used as a shield to protect the serviceman from the application against him of limitations periods which would have barred him from asserting otherwise untimely non-real estate related causes of action. See Mason, 862 F.2d at 242 (products liability case involving personal injury and wrongful death claims); Ray, 464 F.2d at 452 (automobile collision resulting in personal injury); Bickford, 656 F.2d at 636 (military back-pay and allowances); McCance, 492 A.2d at 1352 (assault, assault and battery, and negligence claims); Syzemore, 127 Cal.Rptr. at 741 (personal injury claim against city).

This Court also believes that Le Maistre is distinguishable from the instant case on the basis of its facts. See 333 U.S. at 1. Although the case

clearly involved the application of § 525 to a limitation of redemption period, it also just as clearly involved a non-career military serviceman. Id. at 3. The petitioner there was on active duty from August 18, 1942, until only December 18, 1945. Id. Said duty occurred during times of actual war. This Court interprets La Maistre to rest firmly on the fact that it involved a non-career military serviceman who was called to defend his country during war ; "[T]he Act must be read with an eye friendly to those who dropped their affairs to answer their country's call." Id. at 6.

This Court is persuaded by the cardinal rule of statutory construction that demands that statutes be interpreted to avoid absurd, unreasonable or illogical results. See

e.g., State v. Rand, 430 A.2d 808, 817 (Me. 1981). As the Bailey and King courts have so forcefully recognized:

> Mr. Bailey's contention, distilled to its essence, is that regardless of all other factual and legal considerations, by virtue of the above quoted statute, he must automatically prevail. If his position be meritorious, it would mean that a career service person could buy real estate, ignore and disregard his tax responsibilities for perhaps thirty years and then at his leisure during

the redemption period following discharge, reclaim the property.

Bailey, 488 P.2d at 728.

> To permit a tax delinquent to finally redeem under such circumstances would be tantamount to giving a license to a career service man to acquire real property and then with impunity refuse to pay taxes thereon for so long as he should elect to remain in the service, plus six months thereafter; while casually weighing whether his investment was worthwhile....Such interpretation would give a

career man an unwarranted weapon not intended by the act.

King, 207 So.2d at 67. Even the McCance court recognized the absurdity created by its interpretation:

> In holding that § 525 is to be applied unconditionally to those on active military duty, we are cognizant of the possibility that absurd results may ensue. Conceivably, a career military serviceman could for any reason or for no reason at all wait 30 years or more before filing a law suit. The Damoclean sword, suspended by a single section of the SSCRA over

> the head of the civilian populace, was placed there by Congress. It is for Congress to sheath or remove that sword, if it so desires.

McCance, 592 A.2d at 1357.

Accordingly, this Court interprets § 525 to be of limited applicability. In the case of a career military serviceman, § 525 will toll the running of a redemption period only where the serviceman can show a hardship caused by active duty in the military. In the present case, this Court finds that plaintiff is a career military serviceman. As such, plaintiff has made no such hardship allegation. Nor did he present any evidence from which this Court might infer that active duty in the military created such a hardship.

Accordingly, SSCRA § 525 affords plaintiff nō relief from the Town's acquisition and subsequent sale of his Danforth, Maine, property.

WHEREFORE, the entry is:

This Court finds in favor of defendants in both matters CV-88-04 and CV-88-78. Accordingly, both CV-88-04 and CV-88-78 are dismissed.

DATED: Nov. 6, 1990

/s/_____
Eugene W. Beaulieu
Justice, Superior Court

MAINE SUPREME JUDICIAL COURT

Reporter of Decisions
Decision No. 6005
Law Docket No. WAS-90-575

THOMAS F. CONROY

v.

TOWN OF DANFORTH et al.

Argued September 3, 1991
Decided November 27, 1991

Before McKUSICK, C.J., and ROBERTS, WATHEN, GLASSMAN, CLIFFORD, and COLLINS, JJ.

PER CURIAM

Thomas F. Conroy, who is now a colonel in the United States Army and has been on continuous active duty since 1966, brought the present action in the Superior Court (Washington County, Beaulieu, J.) seeking to quiet title to certain land in Danforth that the Town of Danforth had purported to acquire from him by statutory foreclosure of a tax lien mortgage for nonpayment of taxes. In the action, which also sought damages for trespass, Conroy joined as additional defendants two private parties to whom the Town had sold the land by quitclaim deed after the statutory 18-month period of redemption had expired. For the purpose of this action, the parties made the following stipulation:

[A]ll of the statutory

proceedings allowing the Town to acquire property for nonpayment of taxes were properly followed in this particular instance, including notice and recording requirements; and...were it not for the Soldiers'and Sailors' Civil Relief Act [of 1940, as amended, 50 U.S.C. App. §§ 501-591 (1988)], the Town's title would have been perfected in this particular instance.

Rejecting Conroy's contention, the court ruled in a full opinion that the Soldiers' and Sailors' Civil Relief Act did not protect Conroy from the running of the 18-month redemption period. The court accordingly entered

judgment for the Town of Danforth and the other defendants.

As the sole issue on his appeal to this court, Conroy challenges the Superior Court's interpretation of the Soldiers' and Sailor's Civil Relief Act. We are evenly divided on that issue.

Accordingly, the entry is:

Judgment for defendants affirmed by an evenly divided court.

All concurring.

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